

Henry A. Young, d/b/a Columbia Engineers International and Eastern Indiana District Council of Carpenters, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases 25-CA-10458 and 25-CA-10640

1 December 1983

SUPPLEMENTAL DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 4 June 1980 the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding in which the Board, *inter alia*, ordered the Respondent to make whole certain employees for any loss of pay suffered by reason of the Respondent's discrimination against them. On 10 December 1981 the United States Court of Appeals for the Seventh Circuit entered its judgment enforcing the backpay provisions of the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 25, on 1 December 1982, issued and duly served on the Respondent a backpay specification and notice of hearing, alleging the amounts of backpay due the discriminatees under the Board's Order and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Respondent did not file an answer to the backpay specification, but rather it executed a stipulation with the Charging Party, approved by the Regional Director, in which the parties agreed that certain discriminatees were due specific amounts of backpay and that the Respondent would pay said amounts no later than the close of business on 15 March 1983. To date the Respondent has failed to pay the discriminatees any portion of the backpay agreed upon in the stipulation, asserting that it is financially unable to pay.

On 14 April 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 19 April 1983, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted.

¹ 249 NLRB 1023.

On 29 April 1983 the Respondent filed a brief in opposition to the Motion for Summary Judgment, in which it admits all the facts asserted in the General Counsel's Motion for Summary Judgment but contends that the Board should not grant the General Counsel's motion because the Respondent is financially unable to pay the backpay amounts which it owes.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

Because the Respondent has stipulated to the amounts of backpay which it owes to the discriminatees and now admits all the facts in the General Counsel's Motion for Summary Judgment, it is apparent that there are no substantial and material issues which warrant a hearing. Respondent merely interposes a plea of inability to pay. However, "the issue in a backpay proceeding is the amount due and not whether [the Respondent is] able to pay." *Star Grocery Co.*, 245 NLRB 196, 197 (1979). Accordingly, we grant the Motion for Summary Judgment, conclude that the net backpay due discriminatees Paul Guinther, Jack F. Hammond, and Tom Hogan is as stated in the parties' stipulation which the Regional Director approved on 15 February 1983, and order that payment thereof, plus interest, be made by the Respondent to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, Henry A. Young, d/b/a Columbia Engineers International, Muncie, Indiana, its agents, successors, and assigns, shall make whole Paul Guinther, Jack F. Hammond, and Tom Hogan, by payments to them of \$10,598.69, \$260.67, and \$7,200.31, respectively, plus interest accrued on net backpay since 15 March 1983.

² On being informed that the Respondent was asserting an inability to pay the amount set forth in the stipulation, the Regional Office requested of the Respondent, on 24 March 1983, that it provide the Regional Office with a resume of his assets and liabilities. The Respondent failed to provide the requested information, although he did attach such material to his brief in opposition to the Motion for Summary Judgment.